Swedish Motor Assemblies Sdn Bhd v Haji Mohd Ison bin Baba

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-04-59 OF 1997
GOPAL SRI RAM, SITI NORMA YAAKOB AND DENIS ONG JJCA
15 JANUARY 1998

Administrative Law *— Remedies — Certiorari — Certiorari granted to quash award of Industrial Court — Whether judicial commissioner exceeded his role in judicial review proceedings — Whether certiorari was used to cloak the exercise of appellate power*

Civil Procedure *— Judgments and orders — Consequential orders — Order to remit and re-hear case would occasion further delay — Whether appropriate case to vary order of the judicial commissioner — Whether consequential orders may be made in dismissing an appeal*

Civil Procedure *— Jurisdiction — Industrial Court — Industrial Court used estoppel to preclude the respondent's assertions of dismissal without just cause — Whether judicial commissioner correct in holding that the award contained an error of law — Whether judicial commissioner correct in issuing certiorari to quash award on this ground alone*

The respondent was at all material times employed by the appellant as a production and maintenance manager. By a letter dated 1 August 1992, the appellant purported to terminate the respondent's services by giving him three months' notice. On 15 October 1992, the parties entered into a written agreement under which the respondent resigned from the employment of the appellant. The respondent subsequently took the position that he had not voluntarily resigned but had been dismissed without just cause or excuse. He made representations to the Director General of Industrial Relations. These were subsequently referred by the Minister to the Industrial Court for adjudication. The Industrial Court after hearing evidence dismissed the respondent's claim. The respondent being dissatisfied with the award made against him applied for an order of certiorari to quash it and for mandamus to have the matter remitted to the Industrial Court for re-hearing. The judicial commissioner who heard the application allowed it on grounds that there was a clear error of jurisdiction committed by the Industrial Court when it made the findings which are contrary to the recorded evidence, and that the Industrial Court had erred in law by invoking the doctrine of estoppel against the respondent. Counsel for the appellant argued that the judicial commissioner exceeded the role assigned to him in judicial review proceedings. He further submitted that a court hearing a certiorari application is not entitled to exercise appellate power.

Held, dismissing the appeal and affirming the order of certiorari:

(1) The present case did not fall within the restrictive purview of the rule that a court hearing certiorari is not entitled to exercise

appellate power. It was a matter that fell within the exception to that rule. The judicial commissioner in the present case therefore embarked on an inquiry which he was entitled to do. This was not a case where certiorari was used to cloak the exercise of appellate power (see pp 379E–F and 380F); *R Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 followed; *William Jacks & Co (M) Sdn Bhd v S Balasingam* [1997] 3 AMR 2585 distinguished.

(2) In the present case, the Industrial Court did resort to the doctrine of estoppel to preclude the respondent from asserting that he had been dismissed without just cause or excuse. The judicial commissioner was accordingly correct in holding that the award of the Industrial Court contained an error of law to this extent. Since the distinction between errors of law going to jurisdiction and errors of law that do not has ceased to exist, the judicial commissioner was therefore entirely correct in issuing certiorari to quash the award on this ground alone (see pp 380I and 381A–B); *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 followed.

(3) It is well settled that this court, even when it dismisses an appeal, is entitled to make consequential orders to achieve complete justice. If the order to remit and re-hear the case is permitted to stand, a further delay would be occasioned. This cuts across the spirit and intendment of the Industrial Relations Act 1967 by which Parliament intended speedy resolution to industrial disputes. Therefore, this was an appropriate case to vary the order made by the judicial commissioner. The appeal was therefore dismissed and the order of certiorari was affirmed. Further, the order remitting the case for re-adjudication by the Industrial Court was set aside and a finding entered in favour of the respondent that he was dismissed without just cause or excuse. The matter was to be remitted to the Industrial Court to determine the appropriate remedy to be awarded to the respondent (see p 381C–E, H–I).

[Bahasa Malaysia summary

Pada semua masa material, penentang digaji oleh perayu sebagai pengurus pengeluaran dan penyelenggaraan. Melalui sepucuk surat bertarikh 1 Ogos 1992, perayu memberikan penentang notis tiga bulan yang bertujuan untuk memberhentikan perkhidmatan pennetang. Pada 15 Oktober 1992, pihak-pihak telah mengikat suatu perjanjian bertulis di bawah mana penentang meletak jawatan daripada penggajian perayu. Selepas itu, penentang mengambil pendirian bahawa dia tidak meletak jawatan secara sukarela tetapi telah dipecat tanpa sebab atau alasan yang munasabah. Dia membuat representasi kepada Ketua Pengarah Perhubungan Perindustrian. Ini kemudiannya telah dirujuk oleh Menteri kepada Mahkamah Perusahaan untuk

penghukuman. Selepas mendengar keterangan Mahkamah Perusahaan menolak tuntutan penentang. Penentang yang tidak berpuas hati dengan award yang dibuat terhadapnya memohon perintah certiorari untuk membatalkannya dan untuk mandamus supaya hal itu diremitkan kepada Mahkamah Perusahaan untuk pembicaraan semula. Pesuruhjaya kehakiman yang mendengar permohonan membenarkannya atas alasan terdapat kesilapan yang nyata mengenai bidang kuasa yang dilakukan oleh Mahkamah Perusahaan apabila ia membuat keputusan yang bertentangan dengan keterangan yang direkodkan, dan bahawa Mahkamah Perusahaan telah terkhilaf di sisi undang-undang dengan menggunakan doktrin estopel terhadap penentang. Peguam perayu menghujahkan bahawa pesuruhjaya kehakiman telah melampaui peranan yang diserahkan kepada beliau dalam prosiding kajian semula kehakiman. Beliau seterusnya berhujah bahawa sebuah mahkamah yang mendengar permohonan certiorari tidak berhak melaksanakan kuasa rayuan.

Diputuskan, menolak rayuan dan mengesahkan perintah certiorari:

(1) Kes ini tidak diliputi oleh skop terhad rukun bahawa mahkamah yang mendengar certiorari tidak berhak melaksanakan kuasa rayuan. Ia merupakan hal yang dirangkumi oleh kekecualian kepada rukun itu. Maka pesuruhjaya kehakiman dalam kes ini telah melancarkan siasatan yang mana beliau berhak melakukannya. Ini bukanlah kes di mana certiorari digunakan bagi menyelubungi pelaksanaan kuasa rayuan (lihat ms 379E–F dan 380F); *R Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 diikut; *William Jacks & Co (M) Sdn Bhd v S Balasingam* [1997] 3 AMR 2585 dibeza.

(2) Dalam kes ini, Mahkamah Perusahaan memang telah menggunakan doktrin estopel untuk menghalang penentang daripada menegaskan bahawa dia telah dipecat tanpa sebab atau alasan yang munasabah. Oleh itu pesuruhjaya kehakiman adalah betul dalam memutuskan bahawa award Mahkamah Perusahaan mengandungi kesilapan undang-undang setakat ini. Oleh kerana perbezaan di antara kesilapan undang-undang berkenaan bidang kuasa dan kesilapan undang-undang yang bukan berkenaan bidang kuasa tidak lagi wujud, pesuruhjaya kehakiman adalah betul pada keseluruhannya dalam mengeluarkan certiorari untuk membatalkan award atas alasan ini sahaja (lihat ms 380I dan 381A–B); *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 diikut.

(3) Adalah mantap bahawa mahkamah ini, biarpun di mana ia menolak rayuan, berhak membuat perintah berbangkit bagi mencapai keadilan sepenuhnya. Sekiranya perintah untuk remit dan mendengar semula kes dibenarkan kekal, ia akan menyebabkan kelewatan lanjut. Ini bertentangan dengan semangat dan maksud Akta Perhubungan Perindustrian 1967 yang mana

A Parlimen berhajat pertikaian perindustrian diselesaikan dengan cepat. Oleh yang demikian, ini merupakan kes wajar untuk mengubah perintah yang dibuat oleh pesuruhjaya kehakiman. Dengan itu rayuan ditolak dan perintah certiorari disahkan. Selanjutnya, perintah meremit kes untuk penghukuman semula oleh Mahkamah Perusahaan diketepikan dan keputusan dimasukkan memihak kepada penentang bahawa dia telah dipecat tanpa sebab atau alasan yang munasabah. Perkara itu haruslah diremitkan kepada Mahkamah Perusahaan untuk menentukan remedi yang wajar diawardkan kepada penentang (lihat ms 381C–E, H–I).]

Notes

For cases on certiorari, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 96–227.

For a case on consequential orders, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) para 2040.

For cases on jurisdiction of the Industrial Court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2181–2184.

Cases referred to

Harris Solid State (M) Sdn Bhd & Ors v Bruno Gentil s/o Pereira & Ors [1996] 3 MLJ 489 (refd)

Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh [1997] 1 MLJ 789 (refd)

Nadarajah & Anor v Golf Resort (M) Sdn Bhd [1992] 1 MLJ 506 (refd)

R Rama Chandran v Industrial Court of Malaysia & Anor [1997] 1 MLJ 145 (folld)

Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317 (folld)

Tamil Nesan (M) Sdn Bhd v K Ganesan (unreported) (refd)

William Jacks & Co (M) Sdn Bhd v S Balasingam [1997] 3 AMR 2585 (distd)

Legislation referred to

Industrial Relations Act 1967

Appeal from: Originating Motion No R2–25–136 of 1995 (High Court, Kuala Lumpur)

T Thavalingam (*Shearn Delamore & Co*) for the appellant.
LG Seah (*Lobo & Associates*) for the respondent.

Gopal Sri Ram JCA (delivering oral judgment): This appeal has been brought against the order of the High Court at Kuala Lumpur made on 1 August 1997 whereby certiorari was issued quashing the award of the

Industrial Court which had been delivered on 26 July 1995. The brief facts and background are as follows. A

The respondent was at all material times employed by the appellant as a production and maintenance manager. By a letter dated 1 August 1992, the appellant purported to terminate the respondent's services by giving him three months' notice. Later, on 15 October 1992, the parties entered into a written agreement under which the respondent resigned from the employment of the appellant. Since both these documents are of some importance, they are reproduced in full below. B

Private and Confidential C

Hj Mohd Ison b Baba
No 10 Jalan SS 15/5E
47200 Subang Jaya
1 August 1992

The General Manager D
Swedish Motor Assemblies Sdn Bhd
Jalan Bicu
Shah Alam

Dear Sir,
Notice of Termination of Service E

I wish to terminate my services earlier than my due retirement date if the Company would give me mutually acceptable and adequate compensation in consideration of my services from 2 September 1975. On the basis of the above, this letter serves as my formal three (3) month's notice for termination of service.

F

Best regards.

Yours sincerely,
(Signed)
Hj Mohd Ison b Baba

Next, the agreement, which is in the following terms: G

AGREEMENT

An Agreement made this 15 October 1992 between Swedish Motor Assemblies Sdn Bhd, Jalan Bicu, 40000 Shah Alam hereinafter referred to as the Company on one part and Tuan Hj Mohd Ison bin Baba, NRIC 4099718 of No 10 Jalan SS 15/5E, 47200 Subang Jaya hereinafter referred to as the Executive, on the other part. H

WHEREAS the Executive had on 1 August 1992 tendered his formal three (3) month's written notice, hereinafter referred to as the Notice to resign from the services of the Company and the Company had duly accepted the Notice, it is HEREBY AGREED as follows: I

1 The resignation takes effect from the expiry date of the Notice, ie 1 November 1992.

A 2 Subject to due income tax clearance by the Department of Inland Revenue, a Volvo 740 GLE 1990 year model Registration No BDC 2932 will be transferred to the Executive free of charge, however any income tax payable to be paid by the Executive. The Company will also cover the Executive under the existing SMA Group Insurance up till 18 September 1993 at the Company expense.

B 3 The above compensation is paid by the Company to the Executive, without any admission of liability by the Company due to the mutually agreed early retirement of the Executive.

4 The Executive hereby acknowledges due acceptance of the above terms and he has no further claims of whatsoever nature against the Company in connection with his employment or in any way arising out of or in C the course of his employment in the Company.

5 The Executive further acknowledges and declares the payment made to him above is in FULL and FINAL DISCHARGE of all claims he has or may have against the Company of whatsoever nature.

IN WITNESS WHEREOF the parties hereto have set their hands the day D and year first written.

Signed by the said Executive: (signed)
In the presence of: (signed)

Signed for and on behalf of
E Swedish Motor Assemblies Sdn Bhd: (signed)
In the presence of: (signed)

Later, the respondent took the position that he had not voluntarily resigned but had been dismissed without just cause or excuse. He made representations to the Director General of Industrial Relations. These F were subsequently referred by the honourable Minister to the Industrial Court for adjudication.

The Industrial Court after hearing evidence dismissed the respondent's claim. In its award, it evaluated the evidence led by both sides and came to the following conclusion:

G Since he (the respondent) said he had signed the agreement in CO 1 at p 3 on his own accord, he is estopped from saying he signed it under duress later ...

The respondent being dissatisfied with the award made against him applied for an order of certiorari to quash it and for mandamus to have the matter H remitted to the Industrial Court for re-hearing. The learned judicial commissioner who heard the application acceded to it on two broad grounds. The first appears in the passages of his judgment at pp 12–16 of the appeal record. This is what he said:

In making the award, the learned chairman of the Industrial Court had I framed two issues which he said at p 44 of the record had to be determined —

(a) whether the claimant (applicant) was forced to resign by COW 1 and the managing director of the company; and

(b) whether he was given mutually acceptable and adequate compensation.

With regard to the issue (a) above, learned counsel for the applicant listed four findings of the Industrial Court which according to her are not supported by evidence. The findings are:

(i) He (applicant) alleged that CO 1 p 1 was prepared for him to sign but in the court's opinion it does not matter who prepared it so long as having admitted by him he signed it on his own accord (p 93 of record).

(ii) The claimant had admitted that he signed the agreement on his own accord and therefore how could he come back to say that he had been threatened to sign the agreement and was under duress (p 96 of record).

(iii) Since he said he had signed the agreement in CO 1 p 3 on his own accord, he is estopped from saying that he signed it under duress later (p 97 of record).

(iv) He had also admitted in court that he had signed the agreement freely and on his own accord (p 100 of record).

Counsel for the applicant submitted that the notes of evidence in encl 6 does not record any evidence of the applicant having admitted that he had signed the resignation letter and agreement on his own accord. There was however, no submission in reply on this point by learned counsel for the respondent. After perusing the applicant's testimony, I with respect, agree with the applicant's counsel's submission. There is nothing in the evidence to show that the applicant ever said that he did sign the documents on his own accord. Neither is there evidence to support the finding that: 'His evidence on a balance of probability that he did not know what he signed'. On the contrary, there is evidence to say that the applicant had read the document before he signed when he said at p 16 para C in encl (6): 'I had read it carefully before I signed'. But under cross-examination by counsel for the respondent at p 15 para C in encl (6), he replied: 'I did not sign voluntarily'. This piece of evidence cannot be ignored. With such evidence before the court, the findings of the learned chairman cannot be said to be reasonable and justified. It is the duty of the Industrial Court to scrutinize the evidence before it with utmost care and to do that, it must at all times keep itself alert to the issues and attend to matters it is bound to consider (*R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145). It is obvious in this case that the Industrial Court had failed to investigate and analyse the facts properly before him. Had he done so, his conclusion would have been different. To find that the applicant had signed the documents on his own accord without supporting evidence is indeed perverse. By such finding, the Industrial Court had acted on an incorrect basis of facts on an issue which goes to the very crux of the applicant's case, ie whether the applicant had voluntarily resigned or was dismissed. Therefore, there is a clear error of jurisdiction committed by the Industrial Court when it made the findings which are contrary to the recorded evidence. Accordingly, the findings are perverse. (See *Malayan Banking Bhd v Association of Bank Officers Peninsular Malaysia & Anor* [1988] 3 MLJ 43.) That disposes of grounds (i) and (ii) above.

Before us, Mr Thavalingam argued with great persuasion that the learned judicial commissioner exceeded the role assigned to him in judicial review proceedings. Counsel has submitted that a court hearing certiorari is not entitled to exercise appellate power. In support of this submission, he

refers and relies on the judgment of this court in *William Jacks & Co (M) Sdn Bhd v S Balasingam* [1997] 3 AMR 2585. There, when delivering the judgment of this court, I said (at pp 2589–2590):

> It is well-settled that a court cannot utilize certiorari proceedings as a cloak to entertain what, in truth, is an appeal against findings of fact. If authority is needed for that proposition, it may be found in the decision of the Indian Supreme Court in *Basappa v Nagappa* AIR 1954 SC 440 and in *Dharangadhra Chemical Works Ltd v State of Saurashtra & Ors* AIR 1957 SC 264.
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> In response to this proposition, Mr Sivabalah refers us to the decision of this court in *Amanah Butler (M) Sdn Bhd v Yike Chee Wah* [1997] 2 AMR 1653; [1997] 2 CLJ 79 and the decision of the Federal Court in *Rama Chandran*. I am conscious of the inroad made by these decisions in the field of administrative law. The principle they establish is that when a decision of an inferior tribunal is attacked in public law proceedings for unreasonableness, the inquiry extends to the merits of the decision itself.
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> The question at the end of the day is whether a reasonable tribunal similarly circumstanced would have come to a like decision on the facts before it. However widely understood the proposition in *Rama Chandran* and *Amanah Butler* may be, it does not include the review, in certiorari proceedings, of findings of fact based on the credibility of witnesses.

Whilst having heard that passage being read in court this morning, I wish it had been more happily worded, that statement is one to which I nevertheless adhere.

The present case does not, in my judgment, fall within the restrictive purview of the observations made in *William Jacks & Co (M) Sdn Bhd v S Balasingam*. It is, as correctly submitted by Miss LG Seah, counsel for the respondent, a matter that falls within the exception to that rule as formulated by Edgar Joseph Jr FCJ in the landmark decision of the Federal Court in *R Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 at p 224. The judgment of his Lordship which contains all the learning on the subject sets out the proposition as follows:

> Secondly, the dissenting judgment has made the point that it is not open to this court to find that the employee has been dismissed from service without just cause or excuse, as this was a question of fact for the Industrial Court by virtue of the Industrial Relations Act 1967.
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> This point appears to be supported by what Lord Brightman said in *R v Hillingdon LBC, ex p Puhlhofer* [1986] AC 484 at p 518D–E:
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> > 'Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power ...'
>
> However, like most principles, there are important *exceptions*, which tend to blur the conceptual distinction between errors of law and fact. Two of these exceptions which are relevant to the present case must be mentioned; they are:

(1) Reliance upon an erroneous factual conclusion may itself offend against the principles of illegality or irrationality enunciated by Lord Diplock in *Council of Civil Service Unions & Ors v Minister for the Civil Service* [1985] AC 374. Indeed, in *R v Hillingdon LBC, ex p Puhlhofer*, Lord Brightman made this clear by adding to the passage in his judgment cited above, 'save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely'.

(2) Where there is no evidence to support a conclusion, there is necessarily an error of law in the decision arrived at (see *Edwards v Bairstow* [1956] AC 14; *Din (Taj) v Wandsworth LBC* at p 664H, per Lord Wilberforce; *R v Hillingdon LBC, ex p Islam (Tafazzul)* [1983] 1 AC 688 at p 708D, per Lord Wilberforce and at p 717G, per Lord Lowry).

But, as Wade and Forsyth *Administrative Law* (7th Ed, 1994) have correctly pointed out (at p 312):

> ' "No evidence" does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding (see *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750 at pp 760, 763; *Lee v The Showmen's Guild of Great Britain* [1952] QB 329 at p 345), or where, in other words, no tribunal could reasonably reach that conclusion on that evidence (see *R v Roberts* [1908] 1 KB 407 at p 423). This "no evidence" principle clearly has something in common with the principle that perverse or unreasonable action is unauthorized and ultra vires.'

As I have said, our conclusion that the employee had been dismissed from service without just cause or excuse was arrived at as a result of reviewing the award not only for process but also for substance and, in my view, came within the range of the two exceptions aforesaid.

Based on the foregoing passage, I am unable to agree with the submission of Mr Thavalingam on the point under discussion. The learned judicial commissioner in the present case embarked on an inquiry which he was entitled to do. This is not a case where certiorari was used to cloak the exercise of appellate power.

The second ground on which the learned judicial commissioner issued certiorari was that the Industrial Court had erred in law by invoking the doctrine of estoppel against the respondent.

That the Industrial Court should adjudicate upon the representations referred to it without hearkening to technical rules such as estoppel, waiver, acquiescence, etc is a principle settled beyond dispute. The decision of Eusoff Chin J (now CJ) in *Nadarajah & Anor v Golf Resort (M) Sdn Bhd* [1992] 1 MLJ 506 and that of Mohd Yusof J in *Tamil Nesan (M) Sdn Bhd v K Ganesan* (unreported) which are authorities for the proposition I stated a moment ago were upheld by the Federal Court in *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789.

There is no doubt that in the present case, the Industrial Court did in truth resort to the doctrine of estoppel to preclude the respondent from asserting that he had been dismissed without just cause or excuse. The

learned judicial commissioner was accordingly correct in holding that the award of the Industrial Court contained an error of law to this extent. By reason of the decision of this court in *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 and all the jurisprudence that has flowed thereafter, the distinction between errors of law going to jurisdiction and errors of law that do not, has ceased to exist. The learned judicial commissioner was therefore entirely correct in issuing certiorari to quash the award on this ground alone.

My conclusion that the learned judicial commissioner did not fall into error in this case does not put an end to the matter. There remains the question whether this court ought to permit so much of the order as remits the case to the Industrial Court to stand. It is now well settled that this court, even when it dismisses an appeal, is entitled to make consequential orders to achieve complete justice. See *Harris Solid State (M) Sdn Bhd & Ors v Bruno Gentil s/o Pereira & Ors* [1996] 3 MLJ 489; *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789.

As I earlier said, the reference in the instant case was made on 28 August 1993 and the award handed down on 26 July 1995. In my judgment, if the order to remit and re-hear the case is permitted to stand, a further delay will be occasioned. This cuts across the spirit and intendment of the Industrial Relations Act 1967 by which Parliament intended speedy resolution to industrial disputes. I am therefore in agreement with the submission of Miss LG Seah that this is an appropriate case to vary the order made by the learned judicial commissioner. I am unable to accede to the submission of Mr Thavalingam that the matter should remain in the form contained in the order of the learned judicial commissioner. As I have said, it will only occasion further delay. The question now arises what sort of relief this court ought to formulate. It is clear from the judgment of the learned judicial commissioner that he found the Industrial Court's conclusion on the facts to be perverse. He would have been of course entitled to proceed a step further, based on *Rama Chandran* to make a specific finding that the respondent had been dismissed without just cause or excuse. I am equally inclined to do that. But I am not inclined to grant any remedy to the respondent since this court is not seized with all the relevant facts that touch upon the remedy. I therefore propose to make the following orders:

(1) the appeal is dismissed;

(2) the order of certiorari is affirmed;

(3) the order remitting the case for re-adjudication by the Industrial Court be and is hereby set aside and there be a finding entered in favour of the respondent that he was dismissed without just cause or excuse;

(4) that the matter be remitted to the Industrial Court to determine the appropriate remedy to be awarded to the respondent;

(5) the costs of this appeal to be taxed and paid to the respondent; and

(6) the deposit to be paid out to the respondent to account of his taxed costs. A

Siti Norma Yaakob JCA: I concur with my learned brother that this appeal should be dismissed for the reasons already given.

Denis Ong JCA: I concur. B

Appeal dismissed.

Reported by David Lai C

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